

APPEAL NO. 021656
FILED AUGUST 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 14, 2002. The hearing officer resolved the disputed issue by concluding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (carrier) appeals, arguing that the evidence in this case is overwhelming that the claimant did not make a good faith attempt to seek employment, which would have qualified him for SIBs. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The only SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter, which was from December 21, 2001, through March 21, 2002.

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. Evidence was presented at the CCH on many of the various items listed as information to be considered in Rule 130.102(e). The hearing officer was persuaded that the claimant's job search was conducted with an honest desire to obtain employment and that the claimant sought employment commensurate with his ability to work during each week of the qualifying period.

The hearing officer is the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He determined that the claimant made a good faith effort to obtain and retain employment commensurate with his ability to work during the qualifying period for the fifth quarter of SIBs. Upon our review of the record, we conclude that the hearing officer's determination that the claimant was eligible for SIBs for the fifth quarter is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge